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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 ISAAC GORDON, an individual, and all
those similarly situated,

9 Plaintiff,

10 v.

11 ROBINHOOD FINANCIAL, LLC, a
12 Delaware limited liability company,

13 Defendant.

Case No. 2:19-cv-0390 TOR

**BERGER MONTAGUE PC'S
MOTION FOR LEAVE TO
WITHDRAW AS COUNSEL FOR
PLAINTIFF ISAAC GORDON**

**NOTED FOR CONSIDERATION:
July 6, 2021**

Without oral argument

14
15 **I. INTRODUCTION**

16 Berger Montague PC seeks leave to withdraw from representing Plaintiff
17 Isaac Gordon. Plaintiff Gordon does not oppose this Motion and good cause exists
18 to grant it. Mr. Gordon will not be prejudiced, and the interests of justice will be
19 served, by separating representation of the Class from representation of Mr.

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1 Gordon. Granting the motion will not affect Berger Montague's willing
2 participation in discovery related to Defendant's misconduct allegations. For
3 these reasons, Berger Montague's motion should be granted.

4 II. FACTUAL BACKGROUND

5 Berger Montague has recognized the gravity of Robinhood's allegations
6 since the moment they were made. To ensure that Berger Montague fulfills all of
7 its ethical obligations, it retained ethics counsel immediately upon learning of
8 Robinhood's allegations. (Declaration of E. Michelle Drake (Drake Decl.) ¶ 4.)
9 Berger Montague has also sought and received Mr. Gordon's permission: 1) to
10 withdraw Mr. Gordon as a class representative; 2) to withdraw from representing
11 Mr. Gordon; and 3) to disclose what Berger Montague knew about the texts at
12 issue and Mr. Gordon's relationship with the senders and when Berger Montague
13 learned what it knew. (Drake Decl. ¶¶ 5, 7.) A separate motion seeking to
14 withdraw Mr. Gordon as the class representative is being filed today.

15 At the time that Plaintiff's discovery responses were served on Defendant,
16 Berger Montague believed that those responses were complete and accurate.
17 (Drake Decl. ¶ 8.) Had Berger Montague known of the facts underlying
18 Defendant's allegations earlier, it would not have become involved in this case.

19 Berger Montague has represented plaintiffs in class action litigation for over fifty

1 years and has a well-earned reputation for integrity, honesty, and
2 professionalism. Lead counsel from Berger Montague, E. Michelle Drake, has been
3 a lawyer for twenty years. She has never been disciplined or subject to the kinds
4 of allegations of lawsuit-manufacturing presented here, and has never been
5 involved in a case in which any such allegations were made against her co-
6 counsel. (Drake Decl. ¶ 10.)

7 Ms. Drake and Berger Montague recognize that responding to Defendant's
8 allegations and forthcoming motions implicates numerous ethical responsibilities,
9 including Berger Montague's duty of candor to the Court, its duty of
10 confidentiality to its current client, Mr. Gordon, and its ethical duty to represent
11 the interests of the certified Class as court-appointed class counsel. (Drake Decl. ¶
12 11.) This Motion is intended to facilitate Berger Montague's compliance with all of
13 those duties.

14 III. LEGAL STANDARD

15 Local Rule 83.2(d) governs withdrawal, but does not explicitly address the
16 circumstance presented here, namely, a client represented by multiple firms
17 when only one of those firms seeks leave to withdraw from the representation.
18 The client would not be left unrepresented by Berger Montague's withdrawal and
19 has consented to it. Nonetheless, in certain circumstances, such as when a client

1 seeks to substitute counsel from a new law firm for the client's existing counsel,
2 leave of court is required. L.R. 83.2(d)(3). In such circumstances, withdrawal must
3 be supported by good cause and the decision as to whether to permit counsel to
4 withdraw is "within the sound discretion of the court." *Elf-Man, LLC v. Albright*,
5 2014 WL 12634929, at *1 (E.D. Wash. June 19, 2014). For purposes of this motion,
6 Berger Montague presumes that leave of court is required for withdrawal, and
7 that the good cause standard will govern.

8 **A. Good Cause Exists to Allow Berger Montague to Withdraw from**
9 **Representing Isaac Gordon.**

10 1. Berger Montague's Withdrawal Would Not Have any Material
11 Adverse Effects on the Interests of Mr. Gordon.

12 A lawyer may withdraw from representing a client if "withdrawal can be
13 accomplished without material adverse effect on the interests of the client." RPC
14 1.16(b)(1). Mr. Gordon has consented to the withdrawal. Mr. Gordon will
15 continue to be represented by Mr. Cameron and Mr. Miller. Mr. Gordon's
16 interests will be protected and Berger Montague's withdrawal would not cause
17 any delay.

18 Berger Montague focuses its representation on plaintiffs in class action
19 litigation. Berger Montague was not contacted by Mr. Gordon's counsel about
20 this matter until after the Class had been certified. (Drake Decl. ¶ 9.) Berger

1 Montague entered its appearance in this action after the Class was certified, and
2 immediately moved to be appointed as class counsel, a request this Court
3 granted. (ECF Nos. 91, 97). Berger Montague's representation of Mr. Gordon was
4 therefore always premised on his role as a representative for a certified class, not
5 his status as an individual plaintiff.

6 Given that Mr. Gordon no longer seeks to represent the Class, and that
7 Berger Montague will not seek to substitute an alternative class representative,
8 the class claims in this case cannot proceed. *See* Motion to Withdraw Isaac
9 Gordon as the Class Representative. Accordingly, Berger Montague's expertise in
10 class actions is no longer necessary in this action. Mr. Gordon will continue to be
11 represented by two other law firms, both of whom have been involved in this
12 case since its inception. After Berger Montague notified Mr. Gordon of its desire
13 to withdraw from representing him, Mr. Gordon began communicating with
14 Berger Montague only through his other counsel, Messrs. Miller and Cameron.
15 Messrs. Miller and Cameron have also been handling Defendant's now-pending
16 discovery requests. (Drake Decl. ¶ 12.) Mr. Gordon will suffer no prejudice from
17 Berger Montague's withdrawal.

18 2. Berger Montague's Representation of Mr. Gordon Has Been
19 Rendered Unreasonably Difficult by his Conduct.

20 As set forth above, at the time Mr. Gordon's original discovery responses
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1 were served on Defendant, Berger Montague believed them to be complete and
2 accurate. In Mr. Gordon's supplemental discovery responses, he has now stated
3 that John Cameron, Attorney Cameron's brother, was his friend and sent him the
4 text message at issue. Attorney Cameron has also submitted a declaration
5 addressing these facts. (ECF No. 121.)

6 Berger Montague has no independent factual basis on which to assess the
7 circumstances surrounding the initial texts sent to Mr. Gordon. It had no
8 relationship with Mr. Gordon (or Mr. Cameron, or Mr. Miller, or anyone else
9 related to either of their law firms) at the time the texts were sent. The first time
10 Berger Montague learned about this lawsuit was after the Class had been
11 certified.

12 The client's conduct in this litigation, as evidenced in part by his initial and
13 revised discovery responses, has rendered Berger Montague's ongoing
14 representation of the client unreasonably difficult.

15 **B. Berger Montague's Withdrawal from Representing Mr. Gordon Would**
16 **Not Hinder Discovery into Defendant's Misconduct Allegations.**

17 To the extent the Court has questions about the alleged misconduct, Berger
18 Montague will fully cooperate in answering them, even if Berger Montague no
19 longer represents Mr. Gordon or any other party to this action.

1
2 **C. Berger Montague’s Withdrawal Would Not Affect Its Ability to Continue**
3 **as Class Counsel Through Decertification.**

4 Mr. Gordon’s Motion to Withdraw as the Class Representative, combined
5 with the decision of counsel not to seek to substitute a class representative,
6 would naturally lead to decertification. However, until such time as a
7 decertification order is entered, class counsel has an obligation to protect the
8 Class’s interests. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 968 (9th Cir. 2009)
9 (observing “class counsel’s fiduciary duty is to the class as a whole”); *Parker v.*
10 *Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982) (noting that “courts have
11 recognized that the duty owed by class counsel is to the entire class” and that
12 class counsel must act in the best interest of the class as a whole).

13 Representing a certified class does not require class counsel to support the
14 appointed class representative or to oppose decertification regardless of the facts
15 and circumstances that arise. Rather, class counsel’s obligation is to serve as an
16 advocate for the legal interests of parties who are not personally before the
17 Court. No class member has an interest in being represented by a representative
18 who does not wish to serve in that capacity, or whose personal circumstances
19 might prejudice the class’s interests at trial. Yet, because the class members are
20 not before the Court, they may need lawyers to articulate and advance their

1 desire *not* to continue forward.

2 In this case, it appears likely that no party will argue in support of continued
3 class certification. However, the Class will likely still need counsel to speak on its
4 behalf, such as by confirming that the Class does not oppose Mr. Gordon's
5 withdrawal or decertification. Until such time as the Class is formally decertified,
6 Berger Montague will continue to represent it.¹

7 IV. CONCLUSION

8 Good cause exists to allow Berger Montague to withdraw from
9 representing Plaintiff Gordon and the Court should grant its motion to withdraw.

11
12 ¹ Should the Court wish for the Class to be represented by local counsel other
13 than Messrs. Miller and Cameron during discovery on Defendant's allegations or
14 during motion practice related to decertification, the Washington law firm of
15 Terrell Marshall has agreed to serve as substitute local counsel for the Class.
16 Messrs. Cameron and Miller would not oppose such a substitution. Given Mr.
17 Gordon's Motion to Withdraw as the Class Representative, however, class counsel
18 was hesitant to further complicate the proceedings by introducing new local
19 counsel for a soon to be decertified class. (Drake Decl. ¶ 6.)

1 RESPECTFULLY SUBMITTED AND DATED this 4th day of June, 2021.

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CERTIFICATE OF SERVICE

I, Kirk D. Miller, hereby certify that on June 4, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 4th day of June, 2021.

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